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Heather Case, Acting Director  
Office of Environmental Justice  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Sent by email to: [case.heather@epa.gov](mailto:case.heather@epa.gov)

***RE: Environmental Justice Concern of the Kalispel Tribe of Indians***

Dear Acting Director Case:

The Kalispel Tribe recently received a request for comments on EPA's Working Draft of the *EPA Policy on Environmental Justice for Tribes and Indigenous Peoples*. Based on our recent experience trying to work with EPA, this is a timely and necessary document. The goal of today's letter is not to comment on the Working Draft, however, but to solicit the Office of Environmental Justice's assistance in insisting that its counterparts in other offices within EPA remedy the environmental injustices being visited upon the Kalispel Tribe.

Over the past several years, the Tribe has tried to work with Region 10 to remedy a temperature problem on the Pend Oreille River. The Pend Oreille is the only river that runs through the Kalispel Indian Reservation, and the Tribe is in the midst of leading a \$500 million effort to restore native fish populations in the River. We want to ensure that river temperatures support the life histories of those native fish currently using the River, as well as those that will be able to use the River as fish passage is implemented at upstream and downstream hydroelectric facilities. The Tribe's members have struggled to maintain a subsistence lifestyle in the decades following the construction of these dams, and their future health and well being turns on the Tribe's ability to ensure that conservation actions within the Pend Oreille Basin are coordinated to result in a productive fishery.

To help achieve this end, the Kalispel Tribe, EPA, Idaho, and Washington signed an MOA in 2005 to create a multi-jurisdictional temperature TMDL for the Pend Oreille River. After this cooperative process caved under pressure from the regulated community, the State of Washington moved forward with a TMDL of its own. The Tribe followed the development of this TMDL closely because (1) Kalispel waters are surrounded by waters of the State; (2) all of the sources of unnatural heating on the River are located off-Reservation; and (3) the State acknowledged that the TMDL had to ensure compliance with Kalispel water quality standards. The State continued to bend to pressure from the regulatory community and, after a Region 10 modeler helped the regulated community push its agenda on the State, applied an analytical methodology that does not comply with state or tribal temperature criteria and masks the frequency and magnitude of water quality violations. Despite consistent objections from the Tribe, the State submitted the resulting TMDL to EPA.

The Tribe has shared its concerns with Region 10 on several occasions, but the Region has never responded directly to the Tribe's substantive concerns. After the Tribe discovered that the Region was affirmatively encouraging the State to disregard the Tribe's concerns, the Tribe submitted a letter to Region 10 asking for an impartial review by Headquarters. That request was granted, and the Tribe met with a review team at EPA Headquarters in July. Unfortunately, the Headquarters review team was unwilling to discuss the merits of the Tribe's concerns and has not provided the Tribe with any substantive feedback to date.

The Tribe needs EPA's help to protect its sovereign waters and interests. And yet, even as we strive to work with EPA to protect those rights and interests, we are met with silence and the impression that we are somehow in the wrong for trying to protect our waters and people. This is certainly not consistent with the spirit of the consultation policy that EPA already has or the environmental justice policies EPA is trying to create. We are well aware that we have raised some very uncomfortable issues for EPA, and we need to be able to talk about them to move forward.

We would very much appreciate your assistance in remedying the concerns outlined above. The attached letters describe these concerns in more detail and provide an evidentiary record to substantiate them. Please review these letters at your earliest convenience and help us figure out how we can get EPA to avoid perpetuating ongoing environmental injustices on the Kalispel Tribe by approving the TMDL in its current form.

Thank you for your consideration.



Deane Osterman  
Executive Director, Kalispel Natural Resources Department